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नई दिल्ली, शनिवार, सितम्बर 1, 1990/भाद्रपद 10, 1912

No. 22]

NEW DELHI, SATURDAY, SEPTEMBER 1, 1990/BHADRA 10, 1912

इस भाग में भिन्न पृष्ठ संख्या वाली जाती है जिससे कि यह भलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़कर) केंद्रीय अधिकारियों द्वारा जारी किए गए आवेदन और अधिसूचनाएं

Orders and Notifications issued by Central Authorities (other than Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 13 अगस्त, 1990

आ. अ. 56.—लोक प्रतिनिधित्व अधिनियम, 1951
(1951 का 43) की धारा के अन्तर्गत में, निर्वाचन आयोग 1990 की निर्वाचन याचिका नं. 3 में एरनाकुलम स्थित केरल उच्च न्यायालय के तारीख 18-6-1990 के निर्णय को इसके द्वारा प्रकाशित करता है।

ELECTION COMMISSION OF INDIA

New Delhi, the 13th August, 1990

O.N. 56.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment of the High Court of Kerala at Ernakulam dated 18-6-1990, in Election Petition No. 3 of 1990.

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

The Hon'ble Mr. Justice K. G. Balakrishnan,
Monday the 10th June, 1990

E.P. No. 3 of 1990

Petitioner :

K. C. Madhava Kurup,
"Sreejayam" Adarsh Nagar-2
Pattom Palace P.O.,
Trivandrum-4.

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By Advs. M/s. S. Venkatasubramonia Ayyar,
V. Giri and P. K. Sukumaran.

Respondent :

K. Muraleedharan,

(S/o. K. Marunakaran) Member of Parliament
(Calicut Parliamentary Constituency).

Through the Speaker, Lok Sabha Secretary, New Delhi.

By Advs. M/s. K. S. Rajamany (Senior)

K. K. Gopinathan Nair,
M. Lalitha Nair and S. M. Prem.

This Election Petition having come up for hearing on 5-6-90, the Court on 18-6-90 delivered the following :

K. G. BALAKRISHNAN, J.

E.P. No. 3 of 1990

JUDGMENT

The petitioner contested the General Election to the House of the People (Lok Sabha), held on 22-11-1989 from Kozhikode Parliamentary Constituency as a candidate of "Jena Seva" Party. The respondent was declared elected from the said Parliamentary Constituency by a margin of 28950 votes. The petitioner alleges that the respondent committed serious corrupt practices and, therefore, his election is to be declared void. In the petition the petitioner alleges four types of corrupt practices committed by the respondent. The respondent filed preliminary objections denying the allegations in the petition. The respondent contends that the allegations in the petition are vague and

they are frivolous and vexatious. It is also contended that the petitioner has not complied with the mandate of Section 83 of the Representation of the People Act, 1951 (hereinafter called 'the Act'). The respondent prays that the allegations in the petition are liable to be struck out under order VI Rule 16 C.P.C.

2. It is repeatedly held by the Supreme Court in various decisions that an election petition, where allegations of corrupt practices are imputed must be regarded as a proceeding of quasi-criminal nature wherein strict proof is necessary and the pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law. The allegations in the election petition should not be vague, general in character or lack material particulars. Section 83 of the Act specifically gives guidelines as to the mode in which the pleadings are to be drafted in an election petition. Section 83 requires the petitioner to give a concise statement of the material facts on which the petitioner relies. It is also mentioned in Section 83 that the petitioner shall be forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practices and the date and place of the commission of each such corrupt practice. From Section 83 of the Act it is clear that all preliminary facts which must be proved to establish the existence of a cause of action shall be stated in the petition. In the context of a charge of corrupt practice material facts would mean all the basic facts constituting the ingredients of the particulars corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election petition, a particular fact is material or not and as such required to be pleaded, is a question which depends on the circumstances of the case. In *Udhav Singh v. Madhav Rao Scindia* (S.C.R. 1976 (2) 246) it has been held :

"In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are 'material facts' which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Section 83(1) (a)."

The Supreme Court has consistently taken the view that an election petition can be and must be dismissed under the provisions of Civil P.C. if the mandatory requirements enjoined by Section 83 to incorporate the material facts and particulars relating to alleged corrupt practice are not complied with. By virtue of Section 87 of the Act the provisions of the C.P.C. are made applicable for the trial of an election petition. Under Order VI Rule 16 the Court is empowered at any stage of the proceedings to strike out any pleading which may be unnecessary, scandalous, frivolous or vexatious or which may tend to prejudices, embarrass or delay the fair trial of the petition or suit or which otherwise an abuse of the process of the Court. Order VI Rule 11(a) mandates that a plaint shall be rejected where it does not disclose a cause of action. Therefore, it is clear that an election petition is to be summarily rejected where it fails to furnish a cause of action. (See *Azhar Hussain v. Rajiv Gandhi* (A.I.R. 1986 Supreme Court 1253), *Manphul Singh v. Surinder Singh* (1973 2 SCC 559, (1974) 1 SCR 52, *Kona Prabhakara Rao v. M. Seshagiri Rao* (1982) 1 SCC 442), *Dharpikar Madan Lal Agarwal v. Rajiv Gandhi* (1987 Supp SCC 93).

3. In the petition it is alleged that on behalf of the respondent and with his consent a false propaganda was published that the petitioner had retired from contest and that the petitioner appealed to elect the respondent. It is further alleged that these statements were made by announcements through Loud speakers at meetings and in moving vehicles two days before and on the eve of the day of election. The petitioner's efforts to prevent them by a newspaper advertisements were in vain and the respondent made this propaganda to prejudice the prospects of the election of the petitioner and as such the number of votes secured by him was substantially reduced. It is pertinent to note that the petitioner has not mentioned the names of any of the persons who made such false propaganda. Even though several vehicles allegedly used to spread this propaganda the register numbers or other identifying features of these vehicles are

not mentioned in the petition. It seems that the petitioner alleged this fact as a ground of corrupt practice as envisaged under Section 123(4) of the Act. Section 123(4) was amended by Act 58 of 1958. Formerly under Section 123(4) of the Act, the publication by a candidate or his agent or by any other of any statement of fact which is false, and which he either believes to be false or does not believe to be true in relation to the personal character or conduct of any candidate, or in relation to the candidate, or withdrawal or retirement from contest of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election was a corrupt practice. By Section 13(6) of Act 58, the words "retirement from contest" were omitted from Section 123(4) of the Act. Therefore, the propaganda, if any, regarding the retirement from contest does not amount to corrupt practice. Moreover, the allegations do not disclosed all material facts. It is not specifically pleaded that the respondent gave consent to any person to make false propaganda. The names of the persons who committed the said corrupt practice are not mentioned in the petition. The petitioner has also not produced the copy of the newspaper advertisement, alleged to have been made by him, to counter the propaganda allegedly made by the supporters of the respondent. The petitioner has no case that he filed contemporaneous complaint or petition against his alleged spread of false propaganda. The allegation contained in the first ground lacks material particulars. Therefore, the whole paragraph 3(a)(i) is to be struck out under Order VI Rule 16 of the C.P.C.

4. The next ground urged by the petitioner to challenge the election of the respondent is that the respondent used motor vehicles for the conveyance of electors. It is alleged that many motor vehicles were procured and used for conveyance of electors to and from polling booths for voting purpose on the date of the election with the consent of the returned candidate and his election agent. The petitioner has also mentioned the Taxi Car No. K.R.Z. 2430 as the one used for the conveyance of electors in Kozhikode City. According to the learned counsel for the petitioner the allegations contained in paragraph 3(a)(ii) of the petition would constitute the corrupt practice under Section 123(5) of the Act. Under Section 123(5) hiring or procuring of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent for the free conveyance of any elector to or from any polling station is prohibited. It is significant to note that the use of vehicle for the "free conveyance" of the elector alone would constitute a corrupt practice.

The allegations contained in paragraph 3(a)(ii) of the election petition do not specifically say that motor vehicles were procured and used for the free conveyance of electors. It is also important to note that not a single specific instance has been quoted by the petitioner. A taxi car number is mentioned in the petition but it is not specified as to who were all the electors given conveyance to from polling station. The allegations are too vague and general and that the respondent may not be in a position to defend the same effectively. The allegations are not capable of raising a cause of action.

5. In paragraph 3(a)(iii) of the petition it is mentioned that the signature of the petitioner was forged by somebody for appointment of counting and polling agents. Under what circumstances the petitioner's signature was forged is not mentioned in the petition. It is also not mentioned that the returned candidate or his agent had any hand in forging the signature of the petitioner. It is not mentioned that the returned candidate had given consent to any such malpractices. The allegations in paragraph 3(a)(iii) of the petition are also not sufficient to raise a cause of action.

6. In paragraph 3(a)(iv) of the petition it is mentioned that the president of the Congress (I) Party, the then Prime Minister of India, Shri Rajiv Gandhi announced that an amount of Rs 5000 crores is earmarked for employment and upliftment of women under Mahila Yojana Scheme and this amounted to corrupt practice. The details of this allegation are not mentioned in the petition. It is not stated as to when this announcement was made by the Prime Minister. Either the Press report or the copy of the speech alleged to have been made by the then Prime Minister is not produced by the petitioner. The petitioner has not mentioned as to what impact the Prime Minister's speech had

on the election. It is also significant to note that in paragraph 3(a)(ii) it is not even mentioned that when the Prime Minister made this speech. Going by the allegations in paragraph 3(a)(iv) of the petition it would only indicate that the Government had declared certain policies and the Prime Minister was making announcement of such policies. That by itself would not come within the purview of corrupt practices mentioned in Section 123 of the Act. Under proviso (B) of Section 123(2) it is specifically mentioned that a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of the undue influence. To constitute undue influence as an electoral corrupt practice under Section 123(2) of the Act it must have direct or indirect interference on the part of the candidate or his agent or any other person or with the consent of the candidate or his election agent with the free exercise of any electoral right. It is not mentioned by the petitioner that the alleged speech by the then Prime Minister had any effect of undue influence on the electorate and that he had interfered with the free exercise of electoral right of any of the voters. The allegations contained in paragraph 3(a)(iv) of the election are also not sufficient to raise a cause of action.

7. The learned counsel for the respondent stated that there are other material defects in the petition and, therefore, the same is liable to be dismissed in limine. It is pointed out that the affidavit accompanying the petition was not attested properly. Proviso to Section 83 of the Act says that where the petitioner alleges any corrupt practice, the petitioner shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. Rule 94-A of the Conduct of Elections Rules, 1961 further states that the affidavit referred to in the proviso to sub-section (1) of Section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25. In the instant case the affidavit is not in the prescribed form. The affidavit is seen attested by a senior Superintendent of the Directorate of Treasuries, Ludhiana. In the affidavit it is only mentioned that the same is attested. It is not specifically stated that the affidavit was solemnly affirmed by the petitioner in the presence of the concerned officer. Under Rule 94-A the affidavit should be attested by a magistrate of the first class or a notary or a commissioner of oaths. The non-production of a proper affidavit is violation of Section 83 of the Act. The election petition is not in proper form and that by itself is a ground for rejection of the same.

8. The Representation of the People Act, 1951 is a complete and self-contained code within which any right claimed in relation to an election or an election dispute must be found. The scheme would show that an election can be questioned under the statute as provided by Section 83 on the grounds specified under Section 100 of the Act. As already noticed, Section 83 lays down that an election petition shall contain a concise statement of the material facts and set forth full particulars of corrupt practice. It is obligatory on the part of the petitioner to give requisite facts and details of each corrupt practice with clear exactitude. If the election petitioner fails to give such details and the allegations are vague and general, there may not arise a cause of action and the trial of such election petition is unnecessary. The Supreme Court in various decisions emphasised that if the allegations are vague and general and the particulars of corrupt practices are not stated in the pleading, the trial of the election petition cannot be proceeded with and the petitioner should not be allowed to have a "fishing expedition" or to have a "roving enquiry". The allegations in the present petition do not give the details. They are of vague and general character and the name of the parties who alleged to have committed corrupt practices are not mentioned in the petition. The petition is not in accordance with Section 83 of the Act. The failure to produce a proper affidavit also is violation of the provisions of the Act. Under the above circumstances, the allegations in the petition are liable to struck out under Order VI Rule 16 of the C.P.C. Therefore, I strike out paragraph 3(a)(ii) to (iv) of the election petition. As all the grounds urged by the petitioner are bereft of material particulars, the petition is only to be rejected.

9. The petitioner, after having lost the election has filed this petition without furnishing proper details. The returned candidate has been put to unnecessary hardship by this petition and he is entitled to get reasonable costs. Therefore, I hold that the respondent is entitled to get Rs. 1,000 as costs. The costs shall be paid out of the security deposit by the petitioner and the balance amount is to be returned to the petitioner.

In the result, the election petition is rejected. The office will intimate the substance of the decision to the Election Commission and the Speaker of the House of the People (Lok Sabha) without any delay. Thereafter, an authenticated copy of the decision shall be sent to the Election Commission as per Section 103 of the Act.

Dated : 18th June, 1990.

K. G. BALAKRISHNAN, Judge
[No. 82/KL-HP/3/90]

C. L. ROSE, Secy,
Election Commission of India

नई दिल्ली, 17 अगस्त, 1990

आ.म. 57.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन प्रायोग 1990 की निर्वाचन शर्जी स. 4 में चंडीगढ़ स्थित पंजाब और हरियाणा के उच्च न्यायालय के तारीख 16-5-1990 के नियंत्रण को एतद्वारा प्रकाशित करता है।

New Delhi, the 17th August, 1990

O.N. 57.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order dated the 16-5-1990 of the High Court of Punjab and Haryana at Chandigarh in Election Petition No. : 4 of 1990.

IN THE HIGH COURT OF PUNJAB & HARYANA
CHANDIGARH

CIVIL MISC SIDE

ELECTION PETITION NO. 4 of 1990

Karam Singh son of Harnam Singh, Vill. Beh Nangal P.O. Kamahi Devi, Tehsil Dasuya, District Hoshiarpur. ...Petitioner

Vs.

Shri Kamal Chaudhary, Member Parliament son of late Shri Balbir Singh, Gali Balbir Singh, Sheesh Mahal Bazar, Hoshiarpur (Punjab).

...Respondent.

Amended petition Under Section 80-A of the Representation of People Act, 1951 praying that the petition may kindly be accepted and the election of respondent Shri Kamal Chaudhary as a member of 9th Lok Sabha from Hoshiarpur Lok Sabha constituency, declared on 28-11-89 be declared void.

It is further prayed that a finding may be recorded that it has been proved that the respondent Shri Kamal Chaudhary and Shri S. S. Ray have committed a corrupt practice within the meaning of Section 123(7) of the Representation of the People Act 1951.

It is further prayed that the petitioner may also be awarded the cost of the petition.

Dated the 16th May, 1990

PRESENT :

THE HON'BLE MR. JUSTICE A. L. BAHRI

For the Petitioners : Mr. B. S. Khoji Sr. Advocate with Mr. V. P. Sharma Advocate.

For the Respondents : Mr. R. L. Batta Sr. Advocate with Sarvashri Jagan Nath Bamsal, G. C. Sanghi, S. K. Pabbi & Anupam Gupta Advocate.

JUDGMENT

E.P. No. 4 of 90

A. L. Bahri J.

Karam Singh, an electorate of Hoshiarpur, has challenged election of Shri Kamal Chaudhary, Member of Parliament, respondent in this election petition, on the allegations that the respondent committed corrupt practices as, at his instance Shri S. S. Ray, Governor of Punjab, convened a meeting of Congress leaders of district Hoshiarpur through the assistance of Deputy Commissioners of Hoshiarpur and Ropar and thus he obtained and procured his help in furtherance of his election. In the election meeting held on November 14, 1989, Shri S. S. Ray called upon the persons present to support the respondent in the election. It is also alleged that Shri S. S. Ray, while acting as agent of the respondent, also committed corrupt practice in the aforesaid manner. It was further alleged that Shri S. S. Ray and the two Deputy Commissioners were Gazetted Officers. The petition having been contested by the respondent, the following two preliminary issues were framed, which are being disposed of by this order after hearing arguments of counsel for the parties as no evidence was required to be produced on these issues :—

1. Whether the petition does not disclose any cause of action and is liable to be dismissed on that ground? OPD.
2. Whether office of the Governor is covered under section 123(7) of the Representation of the People Act and if so to what effect? OPP.

E.P. No. 4/90

ISSUE NO. 2:

The objection raised in the written statement was that office of the Governor is not in the service of the Government and further the Governor is not a Gazetted Officer and thus any action of the Governor, as is alleged in the election petition, will not amount to corrupt practice as defined under section 123(7) of the Representation of the People Act.

Chapter II of Part VI of the Constitution refers to the office of the Governor. Article 153 provides for a Governor for each State and under Article 154, the executive power of the State is to vest in the Governor. The Governor of the State is to be appointed by the President by warrant under his hand and seal as provided under Article 155. The Governor is to hold office during the pleasure of the President as mentioned in Article 126. Article 52 of the Constitution provides for the office of the President of India and under Article 53, the executive power of the Union is to vest in the President and is to be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Section 3(8) of the General Clauses Act defines, 'Central Government'. Sub-clause (b) specifically mentions that 'Central Government' shall in relation to anything done or to be done after the commencement of the Constitution mean the President. Section 3 (60) of the General Clauses Act defines 'State Government' and after the commencement of the Constitution in respect of anything done in the State Government in Part 'A' States, the Government would be the Governor. The emoluments, allowances and privileges of the Governor of the State are governed by the provisions of the Governors (Emoluments, Allowances and Privileges) Act, 1982. From the perusal of the provisions of the Constitution and the Acts aforesaid, it is abundantly clear that office of the Governor in the State is under the Central Government i.e. the President. The appointment and the tenure of

office is under the direct control of the President. The emoluments and other service conditions are governed by an Act of the Parliament. The office is established under the Constitution itself. The holder of that office would be an officer designated as Governor in the Constitution. No manner of doubt is left from the provisions aforesaid to come to a conclusion that Governor is serving under the Central Government i.e. the President. The following observations of the Supreme Court in *Guru Gobinda Basu v. Sankari Prasad Ghosal and others*, A.I.R. 1964 S.C. 254, may be noticed with advantage in this context :—

"We must also remember that in the performance of his functions the appellant is controlled by the Comptroller and Auditor General who himself is undoubtedly holder of an office of profit under the Government, though there are safeguards in the Constitution as to his tenure of office and removability therefrom. Under Article 148 of the Constitution the Comptroller and Auditor General of India is appointed by the President and he can be removed from office in like manner and on the like ground as a Judge of the Supreme Court. The salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and until they are so determined shall be as specified in the Second Schedule to the Constitution.

"From the aforesaid provisions it appears to us that the Comptroller and Auditor-General is himself a holder of an office of profit under the Government of India, being appointed by the President and his administrative powers are such as may be prescribed by rules made by the President, subject to the provisions of the Constitution and of any law made by Parliament. Therefore if we look at the matter from the point of view of substance rather than of form, it appears to us that the appellant as the holder of an office of profit in the two Government Companies the Durgapur Projects Ltd. and the Hindustan Steel Ltd., is really under the Government of India; he is appointed by the Government of India, he is removable from office by the Government of India; he performs functions for two Government Companies under the control of the Comptroller and Auditor-General who himself is appointed by the President and whose administrative powers may be controlled by rules made by the President."

In that case, Auditors of the Hindustan Steel Ltd. and the Durgapur Projects Ltd., the Government Companies within the meaning of section 2(18) read with section 617 of the Companies Act to the extent of 100 per cent of shares, were appointed by the Central Government. The full control was of the Comptroller and Auditor General of India. The observations made relating to the office of the Comptroller and Auditor General would also apply to the office of Governor. Thus for the purposes of section 123(7) of the Representation of the People Act, the Governor would be a person in the service of the Government.

Learned counsel for the respondent has argued that since the Governor is to be the State Government, he could not be in the service of the State Government and thus he would be out of the purview of section 123(7) of the Representation of the People Act. This contention cannot be accepted. Section 123(7) does not talk of a person in the service of a particular Government of a State. If a person is in Government service of the Central Government, he would be covered under the aforesaid provision. Thus, issue No. 2 is decided in favour of the petitioner holding that office of the Governor is covered under section 123(7) of the Representation of the People Act with the result that the election petition cannot be dismissed on that ground.

ISSUE NO. 1 :

The relevant extract of section 123(7) of the Representation of the People Act reads as under :—

"123. Corrupt practices—The following shall be deemed to be corrupt practices for the purposes of this Act.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election from any person in the service of the Government and belonging to any of the following classes, namely :—

(a) gazetted officers;"

Sections 81 to 83 pertain to presentation, parties and contents of the election petition. Section 83 reads as under :—

"83. Contents of petition.—(1) An election petition—

- (a) shall contain a concise statement of the material facts on which the petitioner relies;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

Under section 86, the High Court is required to dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117. The letter section deals with the deposit of security for costs. The question for consideration under this issue is as to whether non-compliance of the provisions of section 83, as reproduced above, would result in dismissal of the election petition without trial or the petitioner can be called upon to furnish further particulars of the corrupt practice alleged under section 86(5) of the Representation of the People Act which reads as under:—

"The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition."

The Supreme Court has interpreted the aforesaid provisions in several cases and has laid down the tests. The necessary ingredients and material facts of the corrupt practices must be alleged in the election petition. If any of them is missed, the entire cause is to fail at the initial stage. However, a fine distinction was made that if necessary ingredients and material facts have been mentioned, however, some particulars regarding the same were not mentioned, the party could be called upon to furnish such particulars. To further clarify, it has been laid down that evidence was not required to be mentioned by which necessary ingredients and material facts were to be proved. Before referring to the contentions of the counsel for the parties, such judicial decisions of the Supreme Court may be noticed. R.M. Seshadri v. C. Vasantha Pal and others, A.I.R. 1969 S.C. 692, was a case where corrupt practice committed was of hiring and procuring motor cars to carry voters. The numbers of the motor cars were mentioned. However, it was not further mentioned as to who were the drivers of those vehicles and the voters who had taken benefit of the conveyance were not examined. It was held that the connection of the returned candidate against whom the corrupt practice was alleged with the use of the cars was specifically pleaded. It was further held that test

were matters of evidence which did not require to be pleaded and that pica could always be supported by evidence to show the source from where the cars were obtained, who hired or procured them and who used them for the convenience of voters. It was held that it was not necessary for the petitioner to plead his evidence in this behalf. In *Raj Narain v. Smt. Indira Nehru Gandhi and another*, A.I.R. 1972 S.C. 1302, while interpreting sections 83 and 86(5) of the Representation of the People Act, in para 19 of the judgment, it was observed as under :—

"From these two provisions, it follows that if the allegations made regarding a corrupt practice do not disclose the constituent parts of the corrupt practice alleged, the same will not be allowed to be proved and further those allegations cannot be amended after the period of limitation for filing an election petition; but the Court may allow particulars of any corrupt practice alleged in the petition to be amended or amplified."

After making reference to the earlier decisions of the Supreme Court in *Harish Chandra Bajpai v. Triloki Singh*, A.I.R. 1957 S.C. 444, *Savant N. Balakrishna v. George Fernandez* A.I.R. 1969 S.C. 1201, and *Hardwari Lal v. Kanwal Singh*, A.I.R. 1972 S.C. 515, it was held that facts stated in the petition relating to any corrupt practice must be sufficient to constitute a cause of action. In other words the facts must bring out all the ingredients of the corrupt practice alleged. If the facts stated fail to satisfy that requirement then they do not give rise to a triable issue. Such a defect cannot be cured by any amendment after the period of limitation for filing the election petition. But even if all the material facts are stated in the election petition, for a proper trial better particulars may still be required. If those particulars are not set out in the election petition, they may be incorporated into the election petition with the permission of the Court even after the period of limitation. In para 20 of the judgment, it was observed as under :—

"In our opinion the aim of that section is to see that a person accused of a corrupt practice must know precisely what he is accused of so he may have the opportunity to meet the allegations made against him. If the accusation made is nebulous and is capable of being made use of for establishing more than one charge or if it does not make out a corrupt practice at all then the charge fails at the very threshold. So long as the charge levelled is beyond doubt, section 86(5) is satisfied; rest is mere refinement. They either pertain to the region of particulars or evidence. That section is not designed to interdict a mere clumsy pleading like the petition before us. The purpose of that section is to see that every charge of corrupt practice should be brought before the Court before the prescribed period of limitation and none thereafter so that the trial of the case may not be converted into a persecution by adding more and more charge or by converting one charge into another as the trial proceeds."

In *K. M. Mani etc. v. P. J. Anthony and others*, A.I.R. 1979 S.C. 234, the allegation regarding committing of corrupt practice was that assistance of police officer was obtained who had delivered a speech to support the returned candidate. Transcript of the speech, it was held, must be available to the Court. The assistance of that police officer was also obtained for convening the meeting of the Bishops and the priests for the furtherance of the prospects of the candidate. In *Daulat Ram Chauhan v. Anand Sharma*, A.I.R. 1984 S.C. 621, it was observed as under :—

"In order to constitute corrupt practices, the necessary particulars, statements of facts and essential ingredients that must be contained in the pleadings are :—

- (1) Direct and detailed nature of corrupt practice as defined in the Act.
- (2) details of every important particular must be stated giving the time, place, names of persons use of words and expressions etc.,

(3) it must clearly appear from the allegations that the corrupt practices alleged were indulged in by (a) the candidate himself (b) his authorised election agent or any other person with his express or implied consent."

In *Aznar Hussain v. Rajiv Gandhi*, A.I.R. 1986 S.C. 1253, in para 18 of the judgment, while making reference to the pleading in that case, it was observed as under :—

"The most important test which remained unsatisfied is as regards the omission to satisfy in what manner the assistance was obtained and procured by the election-candidate for promoting the prospects of his election. All that has been stated is. His services were procured and obtained by the respondent, his agents and other persons with the consent of the respondent with a view to assist the furtherance of the prospects of the respondent's election."

It is not mentioned as to who procured or obtained the services of Shri Beg, in what manner he obtained the services and what were the facts which went to show that it was with the consent of the respondent. Unless these 'essential facts' which would clothe the petition with a cause of action and which will call for an answer from the returned candidate are pleaded as per the law laid down in *Manubhai Nandlal Amarsey v. Popatlal Manilal Joshi* (A.I.R. 1969 SC 734) (*supra*) it cannot be said that the petition discloses a cause of action in regard to this charge. In the absence of these material facts and particulars the Courts could not have rendered a verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition. It is not sufficient to show that a Government servant had appeared on the public media to praise one of the candidates. It must also be shown that the assistance of the Government servant was obtained either by the respondent or his agent or by any other person with the consent of the election candidate or his election agent. The averments made in the petition do not show (i) who had obtained or produced the assistance from Shri Beg; (ii) how he had obtained or procured the assistance of Shri Beg; and (iii) how it was said that it was with the consent of the respondent or his election agent. Nor is it shown which, if any, facts went to show that it was in furtherance of the prospects of the respondent's election. In the absence of material facts and particulars in regard to these aspects, the petition would not disclose the cause of action."

In *Ramachandran Kadanappalli v. K. P. Noordeen*, A.I.R. 1988 Kerala 141, it was observed as under :—

"For all corrupt practices, if they are not by the candidate or his election agent, their consent is an essential ingredient. It is the vital link that connects the returned candidate with the corrupt practice. In order to constitute corrupt practice coming under Section 123(7) it is not enough to show that somebody did it. Obtaining or procuring by the returned candidate or his election agent or if by any other person, it was with the consent of either of them be alleged and proved. Who obtained or procured the assistance, how it was obtained or procured, how it was said that it was with the consent of the candidate or his election agent, when and where it was procured, what was the assistance and how and in what manner it was in furtherance of the election prospects are all details to be alleged. Without such particulars the cause of action will not be complete."

In *Dhartipakar Madan Lal Agarwal v. Shri Rajiv Gandhi*, A.I.R. 1987 S.C. 1577 it was observed as under :—

"The pleadings are regulated by section 83 and it makes it obligatory on the election petitioner to give the requisite facts, details and particulars of each corrupt

practice with exactitude. If the election petition fails to make out a ground under section 100 it must fail at the threshold. Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing any roving inquiry."

Keeping in view the ratio of the decisions relied upon by the parties, as referred to above, the contentions of counsel for the parties are being discussed.

Learned counsel for the respondent has pointed out that the following material facts to constitute corrupt practices are not mentioned in the petition, and therefore the petition disclosing no cause of action should be dismissed :—

- (1) No averment was made in the petition that Shri S. S. Ray (Governor) was in service of the Government.
- (2) No averment was made that the two Deputy Commissioners of Hoshiarpur and Ropar were in the service of the Government.
- (3) It is not shown that Shri S. S. Ray and the two Deputy Commissioners were Gazetted Officers.
- (4) It was only mentioned that at the instance of the respondent, Shri S. S. Ray convened a meeting of Congress leaders after taking assistance from the two Deputy Commissioners. However, it was not pleaded that this procurement of help from the Governor and the Deputy Commissioners was with the consent of the respondent.
- (5) There was no averment made in the election petition regarding the source of information about the commission of corrupt practice by obtaining or procuring the help of the Governor.
- (6) It is not pleaded that after procuring or obtaining the assistance of the Governor, it resulted in furtherance of the election result of the respondent.
- (7) The names and full particulars of the police officers of different police stations who gave assistance in organising the meeting of the Congress leaders were not mentioned in the election petition.

According to the contention of the counsel for the respondent, in the absence of material facts on the points aforesaid, it cannot be said that the election petition discloses any cause of action which can be tried and at this stage, the election petition should be dismissed. On the other hand, it has been argued on behalf of the petitioner that corrupt practices alleged in the election petition are two—firstly, that the respondent procured and obtained the assistance of the Governor and it was at his instance that the meeting was called which was addressed by the Governor who called upon the persons present to support the respondent and thus, it was the respondent who had committed the corrupt practice; secondly it has been stated that the Governor as an agent of the respondent convened the meeting at his instance and thus gave support to the respondent in furtherance of his election and, therefore, Shri S. S. Ray committed the corrupt practice being the agent of the respondent. These two corrupt practices are mentioned in paras 13 and 14 of the election petition. The red is a

matter of evidence to prove these allegations and further details were not required to be mentioned either with respect to the nature of the consent or that in fact the help sought furthered the election prospects. The police officers merely informed the persons to attend the meeting on receipt of the messages. It was not necessary to give names of those persons who contacted different persons who attended the meeting.

The points raised by counsel for the respondent are being dealt with one by one. As already held under issue No. 2 the office of the Government was established under the Constitution and he is appointed by the President who is the Central Government and thus Governor would be in the service of the Central Government. The names of the two Deputy Commissioners of Hoshiarpur and Ropar are specifically mentioned in the relevant paragraphs of the election petition. They are described as members of the Indian Administrative Service (I.A.S.). That per se shows that they are in the service of the Government.

The word "Gazette Officer" has not been defined in any statute or rules. Thus, ordinary meaning is attached to this phrase i.e. the person whose appointment is gazetted is treated as Gazetted Officer. The appointments of the Governor and the Deputy Commissioners are gazetted which fact is not disputed during arguments. Thus, the Governor as well as the two Deputy Commissioners are held to be in service of the Government and are Gazetted Officers. It was so alleged in the petition. Thus, on that account it cannot be said that full particulars are not mentioned in the election petition.

It was alleged that no averment was made in the election petition regarding the source of information about the commission of corrupt practice by obtaining or procuring the help of the Governor. The contention of counsel for the respondent in this respect cannot be accepted. In the verification added to the election petition, the petitioner has specifically stated that his source of information was Dr. Kewal Krishan, Ex-M.L.A. It is immaterial if this information was not disclosed in other paragraphs of the election petition.

Reading of the provisions of section 123(7) and the ground of committing corrupt practice, it may be stated that the requirement of law is not that such help sought being a corrupt practice must affect the result of the election. Rather, the true interpretation is that the help sought was to be towards the furtherance of election prospects i.e. it was not the completion of the object but only the direction towards the object was pointed out. It was, therefore, not necessary for the petitioner to plead in what manner in fact alleged help sought by the respondent by committing corrupt practice affected the result. It was not necessary for the petitioner to plead that the persons present in the said meeting convened by the Governor on his call either factually supported the respondent in proceeding votes or themselves voted in his favour.

There is no force in the contention of the counsel for the respondent that it was necessary for the petitioner to

give details i.e. names of the police officers who is responsible to the message from the Deputy Commissioners of the Districts of Hoshiarpur and Ropar Communicated to the Congress leaders about the fixing of the meeting by the Governor which was ultimately attended by them. This is a matter of evidence; possibly the petitioner could not and was not expected to know the names of different police officers, to whom the message is given by the office of the Governor through the offices of Deputy Commissioners, who were earmarked for actual compliance with regard to the fixing of the meeting at the Raj Bhawan. As discussed above, one of the material facts to be alleged and proved by the petitioner was of holding of the meeting at the Raj Bhawan which was addressed by the Governor calling upon the persons present to support the respondent.

Reading of section 123(7) read with section 100 of the Representation of the People Act, the petitioner is required to allege and prove the corrupt practice, as defined therein, committed either by the respondent or by his agent with his consent. The phraseology used in the election petition was that the meeting which was held at the Raj Bhawan on November 14, 1989 was at the instance of the respondent or otherwise convened with the consent of the respondent for procuring support of the Governor in furtherance of his election. The words 'at the instance' or 'with the consent' of the respondent are conclusions which are to be proved from the facts to be pleaded and proved. In the absence of pleading and proving of such facts which could indicate consent of the respondent, it cannot be held that the respondent or his agent committed any corrupt practice. It is not the case pleaded that in the meeting itself the respondent consented to the support being procured by the Governor for him by addressing the persons present and calling upon them to support the respondent. Since the allegation in the election petition is that the meeting was called at the instance of the respondent, it is taken that it was earlier that the request for holding the meeting was made by the respondent either directly or indirectly i.e either meeting him personally or sending him a letter or through a messenger. Nothing was pleaded regarding the mode of making the request, in the absence of which obviously no evidence can be allowed to be produced on behalf of the petitioner in this respect. Likewise, it is not alleged as to how the Governor was acting as an agent of the respondent, that is how that agency was created. Facts material on these aspects are vital to prove the corrupt practice alleged to have been committed by the respondent or his agent. In the absence of these material facts, the cause of corrupt practice cannot be tried. At the stage of evidence, no inquiry can be conducted for fishing out evidence. In the case of Azhar Hussain decided by the Supreme Court, referred to above, the allegation was that services of Shri Beg were procured in the commission of corrupt practice. In what manner the candidate obtained the services and what were the facts which went to show that it was with the consent of the candidate was not pleading in the election petition. Thus, it was held that essential facts which clothe the petition with the cause of action were not pleaded. The Supreme Court again made similar observations in the case of Lalit Kishore Chaturvedi v. Jagdish Prasad Thada, 1990(1) Speed Post Judgments 290 wherein the

decision in Azhar Hussain's case (*supra*) was referred to and it was observed as under :—

"Election, the mechanical guarantee of democracy and means to the end of the Governor by public opinion responsive and responsible to the electorate, is basically fought out on fair criticism. Resorting to corrupt practice in it is subversive of democratic process. Impact of it is deep and wide spread, therefore, statutory compulsion visualised by 83(1)(b) of the Act to set forth full particulars of such practice including names of persons, time and place, has been construed strictly and in absence of precise and specific pleading it has been held to render an election petition *infirm*."

In that case the question related to issuing of a leaflet by the candidate involving corrupt practice as defined in section 123(4) of the Representation of the People Act. The allegation was that the facts stated in the leaflet were false. The Supreme Court observed as under :—

"Merely pleading false, mere statement of law than fact, without necessary factual foundation could not be said to give rise to any triable issue."

Further question for consideration in that case was regarding the undue influence or direct or indirect interference by the candidate or his agent with his consent with free exercise of electorate right was (P. 21) raised

It is observed as under :—

"Undue influence is an inference which arises on facts pleaded and proved. More averment that appellant exercised undue influence in absence of precise facts, namely, the nature of such influence, the persons on whom it was exercised and time and place of it, the pleadings in paragraphs (i) and (j) fell short of the requirement in law."

In view of the ratio of the decisions discussed above, no manner of doubt is left that the pleading in the present case is lacking in material facts to connect the respondent with the commission of corrupt practice. It is not a question of supplying more particulars of the facts already mentioned by amendment of the election petition as contemplated under the law. It is a clear case of absence of the material facts in the pleadings, i.e. no cause of action has been shown in the election petition which can be put to trial.

For the reasons recorded above, this election petition is dismissed with costs.

May 16, 1990.

A. L. BAHRI, Judge

True Copy

[No. 82/PB-HP/4/90]

C. R. BRAHMAM, Under Secy.
Election Commission of India